

PATENT
P56989**REMARKS**

This Response is in reply to an election/restriction requirement (Paper No. 07252005) mailed July 27, 2005. Claims 1 through 41 are pending.

In Paper No.07252005 mailed on 27 July 2005, the Examiner imposed a requirement for election of species under 35 U.S.C. §121 and 37 CFR § 1.142, from among the following five “patentably distinct species of the claimed invention” identified by the Examiner:

1. species I: claims 1-12 and 20-21, directed to an electroluminescent display device;
2. species II: claims 13-19, directed to an electroluminescent display device with a thin film transistor on the rear substrate;
3. species III: claims 22-26, directed to an electroluminescent display device with black matrix layer characteristics;
4. species IV: claims 27-34, directed to an electroluminescent display device with functional thin film characteristics; and
5. species V: claims 35-41, directed to an electroluminescent display device with pixel region characteristics.

Applicant provisionally elects, with traverse, species I, claims 1 through 12, directed to an electroluminescent display device.

Applicant objects to and traverses the election requirement on the grounds that the subject matter of the five species overlap. In addition, the mandatory fields of search for the two embodiments are coextensive. Furthermore, it appears that the election requirement is

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being imposed merely for administrative convenience and such a basis for imposition of such a requirement has been prohibited in previous decisions of the Commissioner.

As specifically stated in *MPEP* §803, the Examiner must show that the (A) The inventions must be independent (*see MPEP* §802.01, §806.04, §808.01) or distinct as claimed (*see MPEP* §806.05 - §806.05(i)); **and** (B) There must be a **serious burden** on the Examiner if restriction is required (*see MPEP* §803.02, §806.04(a) - §806.04(i), §808.01(a), and §808.02). It is respectfully submitted that there would **not be a serious burden** upon the Examiner in searching the invention species (I) through (V).

Firstly, the Examiner has failed to show any kind of burden; in other words, Paper No. 0725005 is incomplete under 37 CFR §1.104(a), (b) and (c). The Examiner has failed to show that the different embodiments are in different classes or that such search would require not just a burden but rise to level of a serious burden. Clarification is subsequent Office correspondence is respectfully requested. The examiner's attention is invited to *MPEP* §803, which teaches that if the search can be made without serious burden, the Examiner **must examine it on the merits** even if there are separate and distinct inventions. The Examiner has not alleged any serious burden in Paper No. 07252005 mailed on 27 July 2005 and thus, the Examiner must examine the entire application. Moreover, because no burden was shown, if the restriction is not withdrawn in the next office action, a finality on the restriction requirement can not be made according to *MPEP* §706.07.

Secondly, as seen above, for example, species II, III, IV and V are also within the field of mandatory search of Species I. Rising to level of a *serious* burden is seriously suspect, especially in light of the generic claims involved. Therefore, there would be no serious burden

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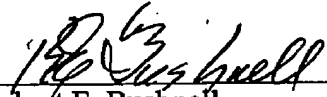
on the Examiner and as required by *MPEP* §803, the Examiner must examine the entire application on the merits. Therefore, the Applicant respectfully submits that the restriction requirement should be removed.

In view of the above, it is requested that the election requirement be withdrawn. It is further submitted that the application is in condition for examination on the merits, and early allowance is requested.

It is submitted that the claims of this application are in condition for allowance, and early issuance thereof is solicited. Should any questions remain unresolved, the Examiner is requested to telephone Applicant's attorney.

No fee is incurred by this Response.

Respectfully submitted,


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